

on. Those decisions, we should emphasize are not just cold, calculating private decisions—they affect intercountry relationships, they affect employment here as well as abroad, they affect the balance of payments; in general, they affect the public interest.

*Criticisms of the Structural Concept and Details of the Control Program and Regulations*

*General theory of the structure of controls.*—The building blocks for the control structure over U.S. direct investments are these: First, the controls are addressed to capital outflows, reinvestment, repatriation of earnings, and the reduction and repatriation of certain liquid foreign balances. Second, restrictions on investment and mandatory requirements as to repatriation are defined by formulas which in turn depend upon the direct investor's experience during prior base periods. The base periods selected are 1965–66 for capital transfers and limitations on liquid foreign balances and 1964 through 1966 for repatriation of earnings by affiliated foreign nationals. Third, the countries of the world are divided into three schedules, with each schedule of countries given different treatment under the control formulas. For Schedule C, consisting primarily of Western Europe and South Africa, there is an absolute moratorium on capital transfers from the U.S. and the toughest requirement as to repatriation is applicable. Schedule B, given a somewhat more moderate treatment, includes Japan, Great Britain, Canada, Australia, and certain oil-producing countries.

Schedule A, for all practical purposes, consists of the so-called developing countries and they receive within the control system the most generous treatment. In applying the controls the company is required to treat all of the countries in a given schedule as an aggregate. Four, it is the theory of the system that the impingement of controls on private decisions in the foreign investment field can be partially relieved by permission for companies to borrow abroad—or to guarantee borrowing abroad—with no immediate effect on the individual direct investor's current investment quota. Pertinent regulations contain, of course, detailed and complex provisions respecting application of the foreign direct investment program but the propositions just outlined comprise the heart of the control structure. In developing our criticisms of that structure, we give attention first to these basic elements and then turn to other aspects.

*The base period.*—Base periods arbitrarily selected for the application of controls always create inequities whether one deals with the excess profits tax, foreign direct investment controls, or any other area. The base periods adopted in this case are especially faulty because they discriminate against those companies whose performance under the Commerce Department's Voluntary Balance of Payments Program made especially important contributions to improvement of our international balance of payments. The base period for capital transfers discriminates against seasoned investors who did not substantially increase their foreign investment during 1965–66; similarly, the base period covering repatriation imposes a harsh standard on those companies which have good records of repatriation and especially when such a record is improved further by artificial increases during the base period in response to the Voluntary Program. Since so much of the inequity resulting from base period selection results from its identification with the period of the Voluntary Balance of Payments Program, it would seem that something approaching entrapment is involved.

The base period seems to have been chosen in part because certain aggregate data was available under the Voluntary Program for the base period years—a statistical reason that has no relevance to selection of a base for control purposes.

Aside from those inequities growing out of established base periods already cited, it may be useful to identify some additional problems from this source that have come to our attention. They include such cases as:

1. Direct investments before or after the base period which do not enter into calculation of the direct investment quota.
2. Abnormal earnings during the base period upon which the repatriation formula is based.
3. Ownership by two U.S. direct investors of unequal shares in an affiliated foreign national where both such investors have other foreign investments within the same schedule of countries. How are the investment and repatriation quotas to be distributed?